

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

MANHARLAL HIRALAL PARMAR

Versus

STATE OF GUJARAT

Appearance:

MR PM THAKKAR for Petitioner

None present for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 30/06/2000

ORAL JUDGEMENT

#. The petitioner filed this writ petition having apprehension of termination of his service. The petitioner was appointed on 12.8.83 as Computer in the office of respondent No.2. In pursuance of that order he joined his services on 24th August, 1983. The appointment order of the petitioner is on record of this case at page No.11. It is the case of petitioner that he was given appointment after he was selected by the selection committee. It is further case of petitioner that his name was sponsored by the employment exchange department. From the appointment order of petitioner I

find that in the first part of it, it is mentioned that this is a purely temporary appointment of the petitioner and then in the conditions of appointment, in condition No.8 thereof, it is mentioned that this appointment is on probation for a period of one year. Either way, the appointment remains to be either temporary or on probation. The apprehension of the petitioner was wholly baseless. It is a case where his services were terminated and probably to get interim relief from this court, he has given out that his services are likely to be terminated. In reply to the special civil application, copy of which is not on record, but the learned counsel for the petitioner admits that the copy of the same was given to him, and he produced a copy thereof in this court, this order of termination of services is annexed which is made on 31st December, 1984. This order was made by respondent No.2 and the petitioner was working in his office. It is difficult to accept that the petitioner was not knowing these facts. During the course of arguments, the learned counsel for the petitioner submitted that this order was not served upon petitioner. Naturally, when the order has been passed, it has to be served. But the petitioner immediately rushed to this court without accepting the same, to make the case of apprehension so that it may be easy for the petitioner to get interim relief. Otherwise also, on apprehension, this petition of the petitioner is difficult to be entertained. Be that as it may, the writ petition was admitted after notice to the respondent and interim relief granted was made absolute. This notice was issued in this case on 1.1.85 and for all these years, the petitioner is continuing in service because of interim relief which has been granted by this court. The learned counsel for the petitioner admits that rejoinder to the reply has not been filed by petitioner. In reply to the special civil application, it is given out that the services of the petitioner were not terminated by way of penalty. It is stated that he was appointed on probation. The list in which his name was stated to be there and sent by the employment exchange department was a forged one. It is stated that two lists were sent by the employment exchange department and in second list, name of petitioner was there, which is forged list. It is contended by learned counsel for the petitioner that the petitioner has not forged this list and otherwise, he contends that on this aspect inquiry should have been held. However, on being put by the court, the learned counsel for the petitioner does not dispute that this list was not sent by employment exchange department. So it is a fact that no such list has been sent by employment exchange department. Who forged it is not

material. When the petitioner was not sponsored by the employment exchange department, this appointment given on that basis was rightly not correct and as he was appointed as probationer he was discharged from services. It is a simpliciter termination of a probationer or a temporary employee for which no inquiry or notice was required to be given. I find sufficient merits in the reply of the respondents that it is not by way of penalty that the order has been passed. A probationer has no right to continue on the post and his services are liable to be terminated. This order is also not casting any stigma on the petitioner. The learned counsel for the petitioner submits that the petitioner is working for all these years and as such, he may be protected. Termination of services has been ordered by the authority and from 1st January, 1985, he is continuing in service under the interim relief granted by this court. It is no more res-integra that interim relief is not final relief and it ultimately merge in the final order passed in the special civil application. Where the special civil application is dismissed then this interim relief shall also be taken to be of no effect nor any benefit can be given to the petitioner on the basis of said order. If the contention of the petitioner is accepted then what it will result that even those illegal orders which are found to be illegal by the court will get legality because at one point of time the court has been pleased to protect the petitioner and he continued in services for all these years. That is not the law. The petitioner has no case whatsoever. The order of termination of services of the petitioner is just and reasonable order and in accordance with law. In case such persons are protected, then it will give encouragement to the frauds which are unfortunately sufficiently increasing in number day by day. A person who is not legally appointed cannot be protected. It is the extra ordinary equitable jurisdiction and only where the petitioner is legally appointed to the post, he can be protected but not otherwise.

#. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief earlier granted by this court stands vacated. As none present for respondents, no order as to costs.

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(sunil)